

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
TERRE HAUTE DIVISION

BRAIDAN C. COY,)
)
Plaintiff,)
)
v.) No. 2:21-cv-00027-JPH-DLP
)
RAYMOND T. LOWE,)
STATE OF INDIANA,)
)
Defendants.)

ORDER DISMISSING CASE

On January 28, 2021, the Court screened Plaintiff, Braidan Coy's, complaint and dismissed it for failure to state a plausible claim. Dkt. 6. The Court gave Mr. Coy through March 1, 2021 to show cause why Judgment consistent with that Order should not issue. *Id.* at 4. Mr. Coy has responded, dkt. 8, but has not addressed the deficiencies explained in the Court's screening order. *See* dkt. 6. Specifically, Mr. Coy has not demonstrated that Raymond Lowe was acting under the color of state law.

In his response, Mr. Coy alleges that "when the state appointed Mr. Lowe . . . he was ultimately granted full or some authority or power . . . which was only given because of a requirement by state law [and] he participated in actions committed under color of state law." Dkt. 8 at 4. However, as discussed in the Court's screening order, dkt. 6, "a public defender does not act under the color of state law when performing a lawyer's traditional functions as counsel to a defendant in a criminal proceeding." *Polk County v. Dodson*, 454 U.S. 312, 324 (1981).

Mr. Coy addresses this by citing *Smith v. Bacon*, 699 F.2d 434, 436 (8th Cir. 1983) for the proposition that "if a conspiracy is adequately pleaded, the court appointed attorneys may be regarded as acting under color of law." Dkt. 8 at 8–9. However, *Smith v. Bacon* is distinguishable because Mr. Coy has not alleged a conspiracy. The plaintiffs in *Smith* named as defendants two judges and several public defenders. *Smith*, 699 F.2d at 435. Here, Mr. Coy has named only one individual defendant, Mr. Lowe, and has not adequately pleaded a conspiracy. *See* dkt. 1.

Furthermore, this Court's screening order did not find that "public defenders never act under the color of state law," *see Smith*, 699 F.2d at 436, but rather that "a public defender does not act under the color of state law *when performing a lawyer's traditional functions* as counsel to a defendant in a criminal proceeding." *Polk County*, 454 U.S. at 324 (emphasis added).

Mr. Coy's claims are therefore **DISMISSED with prejudice**. *See Paul v. Marberry*, 658 F.3d 702, 704–05 (7th Cir. 2011). Final judgment will issue by separate entry.

SO ORDERED.

Date: 3/17/2021

James Patrick Hanlon

James Patrick Hanlon
United States District Judge
Southern District of Indiana

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